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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,557	11/28/2005	Bodo W. Lambertz	DD-25017	7025
7590 Olson & Cepuritis, Ltd. 36th Floor 20 North Wacker Drive Chicago, IL 60606		08/18/2010	EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,557	<b>Applicant(s)</b> LAMBERTZ, BODO W.
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 June 2010.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 and 21-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/GS-68)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This is in response to amendment received on 06/24/10. Claims 1, 6, 15, 1617, 21 and 23 have been amended. Claims 1-17 and 21-23 are examined below.

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the air channel located in the tread area in the sole along with the climate channel and central channel of claim 7 and claims 21-23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the climate channels extending from the central channel to the outside edge of the tread area and the air channel located in the tread are in the sole of the sock of claim 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 7 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the originally filed disclosure for the air channels being located on the sole of the sock along with the climate channels and central channel.

5. Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the drawings or specification for the essentially circular cross section of the climate channels having a gap in the central channel embodiment of figure 7.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 1:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion (figure 1), the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (see figure 1, the side view of the sock provides the lowermost portion as the sole of the sock), an air channel (3: see portion of 3 at the lower most end of the sock in figure 1) extending from the shaft portion and terminating in a wider portion in the tread area (figure 1), at least one climate channel (ribbed portion on instep; column 2, lines 4-13) in the tread area extending outwardly from (figure 1: see portion extending to the lower most end of the sock ) and communicating with the wider portion of the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 1).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (3, on opposite side of sock: column 1, lines 34-37) are provided on the inside of the leg and/or on the outside of the leg of the sock, each air

channel being connected to at least one climate channel (ribbed portion) in the tread area (figure 1: ribbed portion extends to the sole of the sock on each side).

11. (Previously Presented) A sock according to Claim 1, characterized in that the sock is equipped with an X-cross bandage (9).

12. (Previously Presented) A sock according to Claim 1, characterized in that the sock has padding (5, 10, 11).

8. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8: lowermost portion is the sole of the sock), an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area (figure 8), at least one climate channel (ribbed portion of the instep: column 2, lines 4-13) in the tread area extending outwardly from and, communicating with the wider portion of the air channel (3) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

2. (Currently Amended) A sock according to Claim 1, characterized in that at least one additional air channel (14) are is provided on the inside of the leg and/or on

the outside of the leg of the sock, each air channel being connected to at least one climate channel (ribbed portion of the instep) in the tread area (figure 8).

9. (Previously Presented) A sock according to Claim 2, characterized in that the air channel (3) is made of a climate-regulating mesh knit fabric (column 1, lines 26-37).

9. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

Lambertz teaches the following in figure 8:

1. (Currently Amended) A sock (1) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figure 8), an air channel (14) extending from the shaft portion and terminating in a wider portion in the tread area (figure 8), at least one climate channel (3) in the tread area extending outwardly from and communicating with the air channel (14) for removing moisture from the tread area when the sock is worn for athletic activities (figure 8).

10. (Previously Presented) A sock according to Claim 1, characterized in that the climate channel (3) is made of climate-regulating mesh knit fabric (column 1, lines 26-37).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-9, 11-17 and 21-23 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Ogden (US 5,708,985) in view of Lambertz (US 6,286,151).

In regard to claim 1, Ogden teaches a sock (10) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area, a heel area, and a tread area between the toe area and the heel area in the sole of the sock (figures 1-5), at least one climate channel (36, 22) in the tread area (figures 1-5) for removing moisture from the tread area when the sock is worn for athletic activities (see figures 1-5).

However, Ogden fails to teach an air channel extending from the shaft portion and terminating in a wider portion in the tread area.

Lambertz teaches an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area, which would correspondingly to the at least one climate channel to further assist in removing moisture from the user's foot.

It would have been obvious to have provided the sock of Ogden with the air channel of Lambertz, since the sock of Ogden provided with an air channel would provide a sock that allows for even greater breathability and wicking of moisture away from the user's foot.

In regard to claim 2, Lambertz teaches that at least one additional air channel (3) is provided on the inside of the leg and/or on the outside of the leg of the sock (column

1, lines 34-37). Each air channel (3) of Lambertz being connected to at least one climate channel (36, 22) in the tread area of Ogden (see figures 1-5).

In regard to claim 3, Ogden teaches the climate channels (36, 22) have a curved shape in the tread area (figures 2, 3 and 5).

In regard to claim 4, Ogden teaches the climate channels (36, 22) extending from have a curved shape in the tread area (figures 2 and 3).

In regard to claim 5, Ogden teaches the climate channels (36, 22) extending from are partially tapered (figures 2, 3 and 5).

In regard to claims 6, 15, 16 and 17, Ogden teaches the climate channels (36, 22) have an essentially circular cross section, but for a gap in the circular cross-section that can narrow under load to form a closed channel, facilitating air flow through the climate channel (figures 4A-4C).

In regard to claim 7, Ogden teaches the climate channels (36', 52) are connected to one another through a central channel (central channel of 50 in figure 5).

In regard to claim 8, Lambertz teaches air channels (3: column 1, lines 34-37) and the climate channels are made of the same material (column 1, lines 26-37).

In regard to claim 9, Lambertz teaches the air channel (3) is made of a climate-regulating mesh knit fabric (column 3, lines 32-45).

In regard to claim 11, Lambertz teaches the sock equipped with an X-cross bandage (figure 1, identifier 9).

In regard to claim 12, Ogden teaches the sock has padding (56, 54).

In regard to claim 13, Ogden teaches the climate channels (22, 36) are partially tapered (figures 1, 2, 3 and 5).

In regard to claim 14, Ogden teaches the climate channels (36, 22) are partially tapered (figures 1, 2 and 5).

In regard to claim 21, Ogden teaches a sock (10) for use in athletic activities having a foot portion and a shaft portion, the foot portion having a toe area a heel area, and a tread area between the toe area (figures 1-5) and the heel area in the sole of the sock, at least one climate channel (36') in the tread area (figure 5), for removing moisture from the tread area when the sock is worn for athletic activities and further including a plurality of climate channels (36') in the tread area (figure 5), the climate channels being connected to one another through a central channel (channel: 50) arranged along the longitudinal central axis of the tread area, the climate channels branching off from the central channel (figure 5).

However, Ogden fails to teach an air channel extending from the shaft portion and terminating in a wider portion in the tread area.

Lambertz teaches an air channel (3) extending from the shaft portion and terminating in a wider portion in the tread area, which would correspond to the at least one climate channel to further assist in removing moisture from the user's foot.

It would have been obvious to have provided the sock of Ogden with the air channel of Lambertz, since the sock of Ogden provided with an air channel would provide a sock that allows for even greater breathability and wicking of moisture away from the user's foot.

In regard to claim 22, Ogden teaches the climate channels (36') are curved and branch off on both sides of the central channel (channel: 50) and extend from the central channel to the outside edge of the tread area (figure 5, side portions).

In regard to claim 23, Ogden teaches the climate channels (36') have an essentially circular cross section, but for a gap in the circular cross-section that can narrow under load to form a closed channel, facilitating air flow through the climate channel (figures 4A-4C).

#### ***Response to Arguments***

12. Applicant's arguments filed 06/24/10 have been fully considered but they are not persuasive.

I) Applicant does not understand what is not illustrated in the figures with respect to claims 7 and 21-23.

The air channel (25) located in the tread area (13) in the sole along with the climate channel (26) and central channel (262) is not illustrated in any one figure and the claims will not be allowed until there is a figure that is illustrating the claimed invention.

II) Applicant argues that the air channel extending into the tread area and corresponding to the climate channels with a central climate channel is clearly taught in the figures and specification.

The Examiner is still not convinced that the Applicant has properly disclosed a central channel with channels extending therefrom and the air channel extending in the thread area. The specification does have support for the air channel extending in the thread area in some embodiments with climate channels extending therefrom, but not with respect to the central climate channel embodiment of figure 7 and paragraph 0032). There is no mention of there even being an air channel in this embodiment (see paragraph 0032). The tread area (13) is clearly illustrated in figure 7 and there is no sign or mention of an air channel. Further, the specification states, in paragraph 0010, that the air channel is optionally connected to the climate channel in the tread area.

III) Applicant argues that Lambertz does not anticipate the invention or disclose separate and distinct climate channels extending outward from the air channel in the tread region of the sock.

Examiner notes that the above argued limitation is not found in claims 1, 2 and 9-12. Lambertz teaches a climate channel (5) and an air channel (3). The climate channel (5) and the air channel (3) correspond to the instep portion as illustrated in figure 1. The bottom of the instep portion is the tread area (see figure 1). Therefore, Lambertz teaches the limitations as claimed in 1, 2, and 9-12.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765